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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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|---|---|------------------------------|
| Morgan Adams, |) | No. CV 10-1558-PHX-RCB (ECV) |
| Plaintiff, |) | ORDER |
| vs. |) | |
| Maricopa County Sheriff's Office, et al., |) | |
| Defendants. |) | |

Plaintiff Morgan Adams, who is confined in the Maricopa County Estrella Jail, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. The Court will dismiss the Complaint with leave to amend.

I. Application to Proceed *In Forma Pauperis* and Filing Fee

Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The Court will assess an initial partial filing fee of \$15.50. The remainder of the fee will be collected monthly in payments of 20% of the previous month's income each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate government agency to collect and forward the fees according to the statutory formula.

II. Statutory Screening of Prisoner Complaints

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.

1 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
2 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
3 be granted, or that seek monetary relief from a defendant who is immune from such relief.
4 28 U.S.C. § 1915A(b)(1), (2).

5 A pleading must contain a “short and plain statement of the claim *showing* that the
6 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not
7 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-
8 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
9 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
10 statements, do not suffice.” Id.

11 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
12 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
13 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
14 that allows the court to draw the reasonable inference that the defendant is liable for the
15 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
16 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
17 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
18 allegations may be consistent with a constitutional claim, a court must assess whether there
19 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

20 If the Court determines that a pleading could be cured by the allegation of other facts,
21 a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the
22 action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The Court
23 should not, however, advise the litigant how to cure the defects. This type of advice “would
24 undermine district judges’ role as impartial decisionmakers.” Pliler v. Ford, 542 U.S. 225,
25 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide whether the court was
26 required to inform a litigant of deficiencies). Plaintiff’s Complaint will be dismissed for
27 failure to state a claim, with leave to amend because the Complaint may possibly be saved
28 by amendment.

1 **III. Complaint**

2 Plaintiff names the Maricopa County Sheriff’s Office and Corrections Health Services
3 Risk Manager Susan Fisher as Defendants in the Complaint.

4 Plaintiff’s sole ground for relief is that she was denied adequate medical care.
5 Plaintiff alleges that in May 2010, she was prescribed a benzoyl peroxide wash and retin-A.
6 Plaintiff states that “MCSO/CHS” would only issue the benzoyl peroxide wash but refused
7 to give retin-A. Plaintiff states that because she is employed as an entertainer, it is
8 “imperative that her complexion and body remain in good, clear condition,” and that she now
9 has visible scars on her face and back.

10 Plaintiff seeks injunctive relief and money damages.

11 **IV. Failure to State a Claim**

12 **A. Defendant Maricopa County Sheriff’s Office**

13 The Maricopa County Sheriff’s Office is not a proper defendant. In Arizona, the
14 responsibility of operating jails and caring for prisoners is placed by law upon the sheriff.
15 See Ariz. Rev. Stat. § 11-441(A)(5); Ariz. Rev. Stat. § 31-101. A sheriff’s office is simply
16 an administrative creation of the county sheriff to allow him to carry out his statutory duties
17 and not a “person” amenable to suit pursuant to § 1983. Accordingly, the Maricopa County
18 Sheriff’s Office will be dismissed from this action.

19 **B. Failure to Link Injuries with Defendant**

20 To state a valid claim under § 1983, plaintiffs must allege that they suffered a specific
21 injury as a result of specific conduct of a defendant and show an affirmative link between the
22 injury and the conduct of that defendant. See Rizzo v. Goode, 423 U.S. 362, 371-72, 377
23 (1976).

24 Plaintiff has failed to make any allegations against Defendant Fisher and has therefore
25 failed to state a claim against Defendant Fisher.

26 **C. Constitutional Violation and Medical Claims**

27 In order to recover under § 1983, a plaintiff must show: (1) the violation of a right
28 protected by the Constitution or federal law; (2) that was proximately caused; (3) by conduct

1 of a “person” named as a defendant; (4) acting under color of state law. See Crumpton v.
2 Gates, 947 F.2d 1418, 1420 (9th Cir. 1991). Plaintiff has not alleged a violation of a
3 constitutional right in the Complaint.

4 Plaintiff should note that a pretrial detainee’s claim for unconstitutional conditions of
5 confinement arises from the Fourteenth Amendment Due Process Clause rather than from
6 the Eighth Amendment prohibition against cruel and unusual punishment. Bell v. Wolfish,
7 441 U.S. 520, 535 (1979). Nevertheless, the same standards are applied, requiring proof that
8 the defendant acted with deliberate indifference. See Frost v. Agnos, 152 F.3d 1124, 1128
9 (9th Cir. 1998).

10 Not every claim by a prisoner relating to inadequate medical treatment states a
11 violation of the Eighth or Fourteenth Amendment. To state a § 1983 medical claim, a
12 plaintiff must show that the defendants acted with “deliberate indifference to serious medical
13 needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429
14 U.S. 97, 104 (1976)). A plaintiff must show (1) a “serious medical need” by demonstrating
15 that failure to treat the condition could result in further significant injury or the unnecessary
16 and wanton infliction of pain and (2) the defendant’s response was deliberately indifferent.
17 Jett, 439 F.3d at 1096 (quotations omitted).

18 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,
19 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must both know
20 of and disregard an excessive risk to inmate health; “the official must both be aware of facts
21 from which the inference could be drawn that a substantial risk of serious harm exists, and
22 he must also draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994). Deliberate
23 indifference in the medical context may be shown by a purposeful act or failure to respond
24 to a prisoner’s pain or possible medical need and harm caused by the indifference. Jett, 439
25 F.3d at 1096. Deliberate indifference may also be shown when a prison official intentionally
26 denies, delays, or interferes with medical treatment or by the way prison doctors respond to
27 the prisoner’s medical needs. Estelle, 429 U.S. at 104-05; Jett, 439 F.3d at 1096.

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1 Even if Plaintiff had named a proper Defendant or adequately linked her claims to a
2 named Defendant, Plaintiff's allegations still fail to state a claim. Plaintiff has failed to
3 allege that she was denied medical care for a serious medical need. Plaintiff has not
4 demonstrated that failure to receive the retin-A medication will result in a significant injury
5 or that denial of the medication causes the unnecessary and wanton infliction of pain.
6 Accordingly, Plaintiff has failed to state a claim.

7 **V. Leave to Amend**

8 For the foregoing reasons, Plaintiff's Complaint will be dismissed for failure to state
9 a claim upon which relief may be granted. Within 30 days, Plaintiff may submit a first
10 amended complaint to cure the deficiencies outlined above. The Clerk of Court will mail
11 Plaintiff a court-approved form to use for filing a first amended complaint. If Plaintiff fails
12 to use the court-approved form, the Court may strike the amended complaint and dismiss this
13 action without further notice to Plaintiff.

14 If Plaintiff files an amended complaint, Plaintiff must write short, plain statements
15 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of
16 the Defendant who violated the right; (3) exactly what that Defendant did or failed to do;
17 (4) how the action or inaction of that Defendant is connected to the violation of Plaintiff's
18 constitutional right; and (5) what specific injury Plaintiff suffered because of that
19 Defendant's conduct. See Rizzo, 423 U.S. at 371-72, 377.

20 Plaintiff must repeat this process for each person she names as a Defendant. If
21 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific
22 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for
23 failure to state a claim. **Conclusory allegations that a Defendant or group of Defendants
24 have violated a constitutional right are not acceptable and will be dismissed.**

25 Plaintiff must clearly designate on the face of the document that it is the "First
26 Amended Complaint." The first amended complaint must be retyped or rewritten in its
27 entirety on the court-approved form and may not incorporate any part of the original
28 Complaint by reference. Plaintiff may include only one claim per count.

1 A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963
2 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,
3 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as
4 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original
5 complaint is waived if it is not raised in a first amended complaint. King v. Atiyeh, 814 F.2d
6 565, 567 (9th Cir. 1987).

7 **VI. Warnings**

8 **A. Release**

9 Plaintiff must pay the unpaid balance of the filing fee within 120 days of her release.
10 Also, within 30 days of her release, she must either (1) notify the Court that she intends to
11 pay the balance or (2) show good cause, in writing, why she cannot. Failure to comply may
12 result in dismissal of this action.

13 **B. Address Changes**

14 Plaintiff must file and serve a notice of a change of address in accordance with Rule
15 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
16 relief with a notice of change of address. Failure to comply may result in dismissal of this
17 action.

18 **C. Copies**

19 Plaintiff must submit an additional copy of every filing for use by the Court. See
20 LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice
21 to Plaintiff.

22 **D. Possible “Strike”**

23 Because the Complaint has been dismissed for failure to state a claim, if Plaintiff fails
24 to file an amended complaint correcting the deficiencies identified in this Order, the
25 dismissal may count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g).
26 Under the 3-strikes provision, a prisoner may not bring a civil action or appeal a civil
27 judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior
28 occasions, while incarcerated or detained in any facility, brought an action or appeal in a

1 court of the United States that was dismissed on the grounds that it is frivolous, malicious,
2 or fails to state a claim upon which relief may be granted, unless the prisoner is under
3 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

4 **E. Possible Dismissal**

5 If Plaintiff fails to timely comply with every provision of this Order, including these
6 warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at
7 1260-61 (a district court may dismiss an action for failure to comply with any order of the
8 Court).

9 **IT IS ORDERED:**

10 (1) Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. 3) is **granted**.

11 (2) As required by the accompanying Order to the appropriate government agency,
12 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$15.50.

13 (3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim. Plaintiff has
14 **30 days** from the date this Order is filed to file a first amended complaint in compliance with
15 this Order.

16 (4) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of
17 Court must, without further notice, enter a judgment of dismissal of this action with prejudice
18 that states that the dismissal may count as a “strike” under 28 U.S.C. § 1915(g).

19 (5) The Clerk of Court must mail Plaintiff a court-approved form for filing a civil
20 rights complaint by a prisoner.

21 DATED this 15th day of August, 2010.

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25 Robert C. Broomfield
26 Senior United States District Judge
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